

**MINUTES**  
**TEXAS BOARD OF PROFESSIONAL ENGINEERS**  
**REGULAR QUARTERLY BOARD MEETING**  
**1917 SOUTH INTERSTATE 35**  
**AUSTIN, TX 78741**  
**FEBRUARY 14, 2013 – 10:30 AM**

**Call to Order.** G. Kemble Bennett, Ph.D., P.E., Presiding Officer, called the Regular Quarterly Board meeting of the Texas Board of Professional Engineers (TBPE) to order at 10:30 a.m. on February 14, 2013, at the Texas Board of Professional Engineers, 1917 South Interstate 35, Austin, TX. (NOTE: All votes are unanimous, unless noted otherwise.)

**1. Roll Call and Welcome Visitors.**

G. Kemble Bennett, Ph.D., P.E.	Chair
James "Jim" Greer, P.E.	Vice Chair
Daniel O. Wong, Ph.D., P.E.	Secretary (excused absence)
Edward Summers, Ph.D.	Treasurer
Carry Ann Baker	Public Member
Lamberto "Bobby" Ballí, P.E.	Member
Sockalingam "Sam" Kannappan, P.E.	Member
Gary Raba, P.E.	Member (excused absence)
Elvira Reyna	Public Member

A quorum was present. Ms. Veena Mohan, Assistant Attorney General, was present to provide legal counsel to the Board. Mr. Jose I. Guerra, P.E., and Mr. Govind Nadkarni, P.E., Emeritus Board Members were present.

The following staff members were present:

Lance Kinney, P.E.	Executive Director
Priscilla Pipho, MPA	Deputy Executive Director
David Howell, P.E.	Director of Licensing
C.W. Clark, P.E.	Director of Compliance & Enforcement
Jeff Mutscher	Director of Finance
Dewey Helmcamp, III JD	Staff Attorney
Dorothy Gonzales	Executive Assistant

**Visitors.** Terry Bilderback, P.E., Texas Society of Professional Engineers (TSPE); Doug Bell, P.E., TSPE; Trish Smith, Executive Director, TSPE; Peyton McKnight, American Council of Engineering Companies - Texas (ACEC); Bill Tucker, Texas Department of Transportation (TxDOT); Bridget Stehling, Westbrook Engineering; James Westbrook, P.E., Westbrook Engineering.

**2. Public Comment.** None.

**3. Consent Agenda.**

**(The following items may be acted upon under Consent Agenda and are marked with an asterisk\* on the Regular Quarterly Board Meeting Agenda)**

- March 23, 2012, Educational Advisory Committee Minutes
- March 23, 2012, Industry Advisory Committee Minutes
- March 23, 2012, Governmental Advisory Committee Minutes
- March 23, 2012, Educational, Industry, Governmental Advisory Joint Committee Minutes
- November 28, 2012, Licensing Committee Minutes
- November 29, 2012, Legislative Issues Committee Minutes
- November 29, 2012, Enforcement Committee Minutes
- November 29, 2012, General Issues Committee Minutes
- November 29, 2012, Regular Quarterly Board Meeting Minutes

- Administrative Reports and Outstanding Administrative Penalties and Dismissed Cases, Cease and Desist Order, Agreements, Injunctions/Default Judgments
- Licensing Applications.

It was MOVED/SECONDED (Ballí/Summers) to approve the Consent Agenda as submitted. A vote was taken and the MOTION PASSED.

**Discuss and Possibly Approve Board Minutes:**

4. **\*(Consent Agenda)** Discuss and possibly approve minutes of the November 29, 2012, Regular Quarterly Board Meeting Minutes

**Discuss and Possibly Accept Committee Minutes:**

5. **\*(Consent Agenda)** March 23, 2012, Educational Advisory Committee Minutes
6. **\*(Consent Agenda)** March 23, 2012, Industry Advisory Committee Minutes
7. **\*(Consent Agenda)** March 23, 2012, Governmental Advisory Committee Minutes
8. **\*(Consent Agenda)** March 23, 2012, Educational, Industry, Governmental Advisory Joint Committee Minutes
9. **\*(Consent Agenda)** November 28, 2012, Licensing Committee Minutes
10. **\*(Consent Agenda)** November 29, 2012, Legislative Issues Committee Minutes
11. **\*(Consent Agenda)** November 29, 2012, Enforcement Committee Minutes
12. **\*(Consent Agenda)** November 29, 2012, General Issues Committee Minutes

Agenda items 4-12 were considered under Consent Agenda, see above.

**Discuss and Possibly Act on the following agenda items (13-16):**

**13. Board Members' Activity Reports.**

- Bennett
- Ballí
- Greer
- Reyna
- Summers
- Wong

Dr. Bennett commented that the Board members' reports are included as exhibits and for information purposes. No action required.

**14. Emeritus Members.**

- **Emeritus Members serve on Informal Conferences.** Dr. Bennett commented that Mr. Nadkarni had called him to discuss the possibility of Emeritus Members be considered to participate on the Board's Informal Conference rotation list. Dr. Bennett added that it would allow the Board to use the expertise and skills of the Emeritus Members. Dr. Bennett called on Mr. Kinney and discussed further. Mr. Kinney added that in accordance with §139.33, Informal Proceedings, emeritus members could be allowed to participate on Informal Conferences. After further discussion and clarification about responsibilities for emeritus members participating on the informal conference, the Board members unanimously agreed on this suggestion.

It was MOVED/SECONDED (Summers/Ballí) to approve the participation of Emeritus Members on Informal Conferences. A vote was taken and the MOTION PASSED.

- **Activity Reports.** Emeritus members' reports are included for information purposes. No action required.
  - Gonzalez
  - Guerra

**15. Budget.**

- FY13 1<sup>st</sup> Quarter Budget Report

Mr. Mutscher reviewed the budget report included as an exhibit for the Board members. He added at the next Board meeting he will present the mid-year report and start looking at budget models for FY14.

**16. Discuss and possibly act on the following rule proposal.**

- **§137.5 Notification of Name Change, Address Change, Employer Change, and Criminal Conviction.**

Mr. Clark reported that the modifications to §137.5 is to change the title to read License Holder Notification Requirements and add to the requirements that licensees must notify the board if they are sanctioned by another state's engineering licensing board. The rule is being proposed for submission to the Texas Register for comment.

Chair took agenda item #17 out of order, see below.

Board members were provided a copy of the proposed rule language to §137.5, and asked for a motion.

It was MOVED/SECONDED (Ballí/Summers) to approve the rule as submitted to be posted in the Texas Register for comment. A vote was taken and the MOTION PASSED.

**Discuss and Possibly Act on Issues Regarding Committee Reports or Items on the Committee Agendas:**

**17. Legislative Committee.**

Mr. Greer commented that the Committee members were provided a copy of HB613 by Orr, specifically about foundation repair that may have an overlap issue with our statute. Staff was instructed to keep track of this bill and notify Committee members of any actions. He commented that Mrs. Pipho reported that there will be four (4) bills; two for Sunset (House and Senate); and two for SDSI (House and Senate). The Sunset bills have been drafted but at this time there is only a sponsor from the Senate; still looking for a sponsor from the House side. The SDSI bills have been drafted, and they have a sponsor from the Senate; still looking for a sponsor from the House side. The SDSI language has been released and will propose moving the current SDSI language to the Government Code. It has been slow moving process. Mr. Kinney added that the modification to the Sunset bill was that original six (6) year extension recommendation has been changed back to a twelve (12) year extension and was approved by the Sunset Commission.

Chair went back to agenda item #16 for completion of action, see above.

**18. Licensing Committee.**

- **Personal Appearances from Licensing Applicants.**

Mr. Ballí reported that the Committee received 19 applicants. Board members were given a summary of the actions taken by the Licensing Committee on the applicants, see attached.

It was MOVED/SECONDED (Ballí/Summers) to accept the Licensing Committee's recommendations for all 19 applicants, as summarized on the attached summary sheet. A vote was taken and the MOTION PASSED.

He also commented that the meeting went long, and the reports by the Mr. Kinney and Mr. Howell were written reports submitted to the Committee. He expressed that the short summary on these reports was not intentional, and invited guests to contact the Board for further discussion if they wish to do so.

**Discuss and Possibly Act on Reports or Items reported by the Executive Director:**

**19. Executive Director's Report.** Mr. Kinney reported on the following agenda items:

- **Activity Report.** The Executive Director report was included for the Board members to review, and Mr. Kinney stated that if anyone had any questions, he would be glad to discuss.
- **CBT.** The FE exam will be offered via Computer Based Testing (CBT) in 24 exam sites in Texas, effective January 2, 2014. The exam will now be available eight months out of the year, six days a week. Exam grades will now be delivered in two days. Security at testing centers is very impressive. The FE and FS exam will now be six hours instead of eight. The FE exam fee will go up to

\$250. Staff has already talked to Deans at the Education Advisory Committee meeting. Mr. Ballí added that the testing sites were impressive; people in the Rio Grande Valley area will not have to travel to Austin and spend the night. Mr. Nadkarni commended Mr. Kinney for all his hard work on getting the FE exam to transition to CBT. Mr. Kinney is now working diligently to get the PE exam offered via CBT.

- **Summary of Guidance Regarding Lobbying and Telephonic Meetings.** This is a written summary of the recommendation reported by Ms. Mohan, Assistant Attorney General Office regarding Board members' ability to lobby and provide information to Legislators; prohibition against staff members lobbying; and telephonic meetings. He added that there are criteria for having open meetings, emergency meetings, and something called advisory committee meetings. Staff recommends that the Board continue to hold all meetings according to the Open Meeting Act and continue to have them face-to-face.
- **NCEES.** Mr. Greer and Mr. Kinney attended the NCEES Board Presidents' Assembly in Atlanta, GA, February 7-9, 2013. Items discussed were CBT, EWeek, and other reports as listed on the agenda included as an exhibit. There were 62 out of the 69 state Boards represented in some way. Mr. Greer added the CBT and social media was discussed, and great ideas shared. He commented that Mr. Kinney already implements the social media. He reported that Mr. Kinney was part of the CBT panel discussion and Mr. Kinney responded to all the answers and provided solutions to questions. He noted that the tone of the meeting was more practical, and how to get CBT done. He commended Mr. Kinney for a job well done.
  - **Central/Southern Zone.** This year's meeting will be a joint meeting in conjunction with the Central Zone in Biloxi, MS. Registration ends March 1, anyone interested in attending, please let us know. Mr. Kinney reminded Board and Emeritus Members to let him know if they are interested in participating in any NCEES Committees. Mr. Ballí asked if we are doing anything special as the Texas Board for the annual meeting. Mr. Kinney responded that the annual meeting planning is handled by NCEES. He invited all the Board members to attend the annual meeting. He did add that the Board has scheduled a workshop before the annual meetings. He did invite the Board members if anyone was interested in providing an invocation, to please let him know. He reported that at the April Zone meeting, elections are being coordinated for NCEES Board positions and all zone nominees' information are included as exhibits.
  - **Annual Meeting.** The annual meeting is scheduled in San Antonio in August 2013.
- **Journey to Excellence Update.** Continuing efforts to improve, everyone is engaged. Lots of changes, coming, i.e., new look to website, how to file a complaint on line, as well as many internal communications projects. Mr. Kinney thanked and commended staff for all their hard work.
- **EWeek.** It's eWeek month/year. NCEES is sponsoring eWeek. Mr. Kinney encouraged Board members to participate in eWeek. A proclamation from the Governor is enclosed. There is no specific event that the Board is sponsoring. Mr. Kannappan commented that he is participating in two events during eWeek. Mr. Kinney added NSPE got someone on the ISS space station to promote Eweek.
- **Windstorm.** As of January 1, 2013, if inspectors did not re-apply to be on the TDI list, they have been taken off the list. The Board is up to 219 engineers that are on the TBPE approved windstorm list.
- **Advisory Committee Update.** The Education, Industry, and Government Advisory Committees met in January. One main topic of discussion was faculty licensing. There was a discussion amongst the committee members, the suggested change requires statutory change. In general faculty licensure is a good thing, how to make it happen is the discussion. The members agreed to move the meetings to the summer.
- **Staff Attorney Report** (Dewey Helmcamp III, J.D.). Mr. Helmcamp reviewed the staff attorney reports included as exhibits.
- **Outreach.** A report is included for the Board members review. Mr. Kinney thanked the Board members and staff for all their hard work and participation in the outreach. He added that TBPE will be hosting the first outreach webinar on March 19<sup>th</sup>. This will allow PEs to fulfill their CEU requirements. Kudos included for the Board members to review.
  - Kudos.

Chair took agenda item #23 was taken out of order, see below.

**Discuss and Possibly Act on Enforcement/Disciplinary Matters:**

**20. \*(Consent Agenda) Administrative Reports, Outstanding Administrative Penalties Dismissed Cases, Cease and Desist Order, Agreements, Injunctions/Default Judgments.**

Agenda item #20 was considered under Consent Agenda, see Agenda item #3 above.

**21. Agreed Board Order.**

1. D-33359 (Ballí)
2. Ty J. Hagen, P.E. – D-33726 (Ballí)

It was MOVED/SECONDED (Kannappan/Summers) to accept the Agreed Board Orders as submitted. A vote was taken and the MOTION PASSED (Mr. Ballí abstained).

**22. Consent Orders.**

SOAH Result

(None)

Informal Reprimands (In accordance with Board Rule 139.31(b) individual names are not listed)

3. D-33852
4. D-33851
5. D-33606

Practice Violations

6. Edward D. Hill, P.E. – D-33949
7. David L. Michaelson, P.E. – D-33364

Non-Practice Violations

(None)

Sanctions Against Non-License Holders

(None)

Firm Registrations/Sole Proprietorship Sanctions

(None)

It was MOVED/SECONDED (Ballí/Kannappan) to approve the Consent Orders as submitted. A vote was taken and the MOTION PASSED.

**23. Discuss, possibly act on request to reconsider Approved Board Order.**

- D-33373-James E. Westbrook.

Mr. Clark shared with the Board members that Mr. Westbrook signed a Consent Order, April 18, 2012, which was accepted by the Board on May 23, 2012. The requirement outlined in the Consent Order, Mr. Westbrook had to pay an administrative fee to be paid within 30 days, a one year probated suspension pending penalty payment, and taking the Level I Ethics course through Texas Tech University within a six month time frame. Mr. Westbrook did pay the penalty on time; he registered for the Level I Ethics course in June 2012; unfortunately, the course was not completed in accordance with the deadline (November 24, 2012) outlined in the Consent Order. He completed the course on December 26, 2012. Per the terms of the order approved by the board, Mr. Westbrook was sent a letter informing him that he had not completed the Level I Ethics course by November 24, 2012, as outlined in the Consent Order therefore, his license has been suspended. He is here before the Board to appeal the suspension.

Mr. Westbrook thanked the Board for allowing him to present his case before the Board. He affirmed Mr. Clark's statement as stated. He shared with the Board members the reason for the Consent Order he signed. Dr. Bennett commented that the reason for Mr. Westbrook to appear before the Board is to appeal the November 28, 2012, letter stating that his probation was lifted and his license was now suspended. He is before the Board to request that the suspension of his license be lifted, but he will remain on probation for the appropriate amount of time stated on the Consent Order. Mr. Westbrook agreed. Dr. Bennett explained that

the Board is not to reconsider the original Consent Order, but rather whether or not to reinstate his license so he can practice but he will still remain on probation till May 2012. Dr. Summers asked Mr. Westbrook why he did not complete the course as ordered.

He commented that when he signed up for the Level I Ethics course, Texas Tech provided a completion date of December 2012, but he didn't realize that the date on the Consent Order from the Board and the completion date at time of registration for the course were different. He recommends the course to everyone. He accepts full responsibility for not checking on the two different dates.

Dr. Bennett asked Mr. Westbrook if he has signed any designs during the suspension of his license. Mr. Westbrook responded that he had another PE on his firm sign, and since his departure, Mr. Westbrook has hired other PEs to sign the designs. He stated that he has not signed any designs.

It was MOVED/SECONDED (Summers/Baker) to continue the probated suspension until set date by the Board. A vote was taken, and the MOTION PASSED 6 to 1; Mr. Ballí voted against the motion.

Board members were advised that since this incident, the letters requiring taking the ethics course have been modified to state that the dates proposed by the Murdough Center at Texas Tech may not coincide with the TBPE required date.

**Discuss and Possibly Act on Licensing Applications requiring board ruling:**

24. **\*(Consent Agenda)** Licensing Applications

Vote or Reconfirm Votes Pursuant to Board Rule §133.87:

- Approved for Exams
- Approved for Licensure
- Exams Not Approved
- Firms Approved
- Not Approved for Licensure
- Waivers – Both
- Waivers – FE
- Waivers—PE

Agenda item #24 was considered under Consent Agenda, see Agenda item #3 above.

**Discuss and Possibly Act on Other Matters**

25. **Issues from Board members for future meetings.**

Items that may be discussed at NCEES Annual meeting that may require the Board's action/input.

**Adjourn.**

It was MOVED/SECONDED (Ballí/Summers) to adjourn the meeting at 11:45 am. A vote was taken and the MOTION PASSED.

Date Board approved minutes as submitted:

May 23, 2013